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HELEN OF TROY TEXAS CORPORATION;  
OXO INTERNATIONAL LTD.

**UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

JENS ERIK SORENSEN, as Trustee of  
SORENSEN RESEARCH AND  
DEVELOPMENT TRUST,

Plaintiff/Counter-  
Defendant,

v.

HELEN OF TROY TEXAS  
CORPORATION; OXO  
INTERNATIONAL LTD.; AND DOES  
I – 100,

Defendants/Counter-  
Plaintiffs.

**Case No. 3:07-cv-02278 BTM  
(CAB)**

**ANSWER TO COMPLAINT FOR  
PATENT INFRINGEMENT AND  
COUNTERCLAIMS**

**REQUEST FOR JURY TRIAL**

**THE HONORABLE BARRY TED  
MOSKOWITZ**  
UNITED STATES DISTRICT JUDGE  
(COURTROOM 15)

Defendants, HELEN OF TROY TEXAS CORPORATION (“HOT”) and  
OXO INTERNATIONAL LTD (“OXO”) (collectively “Defendants”), and for their  
answer to Plaintiff’s Complaint for Patent Infringement, hereby state as follows:

**THE PARTIES**

**COMPLAINT NO. 1:**

SRDT is a California resident, and the trustee of a trust organized according  
to California law, and owner of all rights to United States Patent No. 4,935,184

(hereinafter '184 patent"). A true and correct copy of the '184 patent is attached hereto as Exhibit A.

**ANSWER TO COMPLAINT NO. 1:**

Defendants admit that Exhibit A attached to Plaintiff's Complaint purports to be a copy of the "'184 patent. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1.

**COMPLAINT NO. 2:**

Defendant Helen of Troy Texas Corporation is a Texas corporation with offices located at 1 Helen Of Troy Plaza, El Paso, Texas 79912, engaged in the manufacture, import, sale, and/or offer for sale within the United States, including this District, of consumer products, including the Accused Products identified herein.

**ANSWER TO COMPLAINT NO. 2:**

HOT admits that it is a Texas corporation with offices located at 1 Helen Of Troy Plaza, El Paso, Texas 79912. HOT denies the remaining allegations in Paragraph 2. OXO is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2.

**COMPLAINT NO. 2A:**

Defendant OXO International Ltd. is a Texas limited liability company having offices located at 1 Helen Of Troy Plaza, El Paso, Texas 79912, engaged in the manufacture, import, sale, and/or offer for sale within the United States, including this District, of consumer products, including the Accused Products identified herein.

**ANSWER TO COMPLAINT NO. 2A:**

Defendants admit that OXO has offices located at 1 Helen Of Troy Plaza, El Paso, Texas 79912. Defendants admit that OXO is engaged in the import, sale and

1 offer for sale within the United States of consumer products. Defendants deny the  
2 remaining allegations of Paragraph 2A.

3 **COMPLAINT NO. 2B:**

4 Defendants Helen of Troy Texas Corporation and OXO International Ltd.  
5 (hereinafter collectively, "OXO") are closely related parties sharing an address in  
6 El Paso, Texas 79912, engaged in the manufacture, import, sale, and/or offer for  
7 sale within the United States, including this District, of consumer products,  
8 including the Accused Products identified herein.

9 **ANSWER TO COMPLAINT NO. 2B:**

10 Defendants deny the allegations of Paragraph 2B.

11 **COMPLAINT NO. 3:**

12 Defendant DOES 1 through 100 are entities, form unknown, who, upon  
13 information and belief, are collectively and individually, each involved in the  
14 manufacture, import, sale, and or offer for sale within the United States, including  
15 this District, of consumer products, including the Accused Products identified  
16 herein.

17 **ANSWER TO COMPLAINT NO. 3:**

18 Defendants are without knowledge or information sufficient to form a belief  
19 as to the truth of the allegations in Paragraph 3.

20 **COMPLAINT NO. 4:**

21 On information and belief, Defendants have acted as agents of one or more  
22 of each other during some or all of the times relative to the subject matter of this  
23 Complaint.

24 **ANSWER TO COMPLAINT NO. 4:**

25 Defendants deny the allegations of Paragraph 4.  
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**CLAIM FOR RELIEF**

**(Patent Infringement)**

**COMPLAINT NO. 8:**

SRDT realleges and incorporates herein by reference paragraphs 1 through 7, inclusive, as though fully set forth herein.

**ANSWER TO COMPLAINT NO. 8:**

Defendants incorporate their answers to paragraphs 1 through 7 as their response to the allegations of Paragraph 8.

**COMPLAINT NO. 9:**

The '184 patent entitled "Stabilized Injection Molding When Using a Common Mold Part With Separate Complimentary Mold Parts," was issued on June 19, 1990.

**ANSWER TO COMPLAINT NO. 9:**

Defendants admit that the '184 patent is entitled "Stabilized Injection Molding When Using a Common Mold Part With Separate Complimentary Mold Parts," and the face of the '184 patent states "Date of Patent: Jun. 19, 1990."

**COMPLAINT NO. 10:**

On information and belief, Defendants have in the past and presently make, import into, sell or offer for sale within the United States and this District, products for which the two plastic component external plastic shells are manufactured through processes which incorporate all elements of Claim 1 of the '184 patented process. Those products identified below and any other OXO products sold under any name which are manufactured utilizing similar processes, including but not limited to, any other product manufactured using the same injection mold as any of the products identified in the following table, are collectively referred to herein as "Accused Products":

- a. OXO Good Grips 5.5 oz. Funnel

**ANSWER TO COMPLAINT NO. 10:**

### **COMPLAINT NO. 11:**

### ANSWER TO COMPLAINT NO. 11:

### **COMPLAINT NO. 12:**

**ANSWER TO COMPLAINT NO. 12:**

**COMPLAINT NO. 13:**

**ANSWER TO COMPLAINT NO. 13:**

### **COMPLAINT NO. 14:**

**ANSWER TO COMPLAINT NO. 14:**

ANSWER TO COMPLAINT FOR PATENT INFRINGEMENT AND COUNTERCLAIMS  
Case No. 3:07-cv-02278-BTM (CAB)



1 **COMPLAINT NO. 15:**

2 Defendants have been on actual notice of the '184 patented process at least  
3 as early as October 2005.

4 **ANSWER TO COMPLAINT NO. 15:**

5 Defendants deny the allegations of Paragraph 15.

6 **COMPLAINT NO. 16:**

7 Upon information and belief, the Defendants have engaged in design,  
8 manufacture, import, sell, and/or offer for sale within the United States, including  
9 this District, products that have dual-layer external plastic housings.

10 **ANSWER TO COMPLAINT NO. 16:**

11 Defendants deny the allegations of Paragraph 16.

12 **COMPLAINT NO. 17:**

13 On information and belief, said products identified herein and as-yet-  
14 unidentified products manufactured through the same or substantially similar  
15 process are manufactured through processes which incorporate all elements of the  
16 '184 patented process.

17 **ANSWER TO COMPLAINT NO. 17:**

18 Defendants deny the allegations of Paragraph 17.

19 **COMPLAINT NO. 18:**

20 None of the Defendants have obtained a license or any other authorization  
21 from the Plaintiff for manufacture, import, sale, and/or offer for sale in the United  
22 States of products manufactured through use of the '184 patented process.

23 **ANSWER TO COMPLAINT NO. 18:**

24 Defendants refer Plaintiff to Defendants' answer to Paragraph 11.

25 **COMPLAINT NO. 19:**

26 Plaintiff's initial infringement notice to one of OXO's parent companies  
27 dated October 17, 2005 provided OXO with a drawing and associated claim chart  
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1 showing the substantial likelihood pursuant to 35 U.S.C. § 295, of the infringement  
2 of the '184 patented process by the import, sale and/or offer for sale in this District  
3 and the United States of the identified Accused Products and all other OXO  
4 products manufactured with processes which incorporate the elements of the '184  
5 patent.

6 **ANSWER TO COMPLAINT NO. 19:**

7 Defendants deny the allegations of Paragraph 19.

8 **COMPLAINT NO. 20:**

9 The evidence provided to OXO in the initial letter and subsequent  
10 correspondence, illustrate how the processes utilized to produce the Accused  
11 Products incorporated each element of the '184 patent claims.

12 **ANSWER TO COMPLAINT NO. 20:**

13 Defendants deny the allegations of Paragraph 20.

14 **COMPLAINT NO. 21:**

15 The initial letter requested OXO pursuant to 35 U.S.C. § 295 to provide  
16 factual information necessary to verify the manufacturing process used to make the  
17 Accused Products.

18 **ANSWER TO COMPLAINT NO. 21:**

19 Defendants deny the allegations of Paragraph 21.

20 **COMPLAINT NO. 22:**

21 To date, OXO has not produced admissible evidence demonstrating the  
22 actual process used to manufacture the Accused Products.

23 **ANSWER TO COMPLAINT NO. 22:**

24 Defendants deny the allegations of Paragraph 22.  
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**COMPLAINT NO. 23:**

SRDT made reasonable efforts to obtain process information for the Accused Products, providing OXO with an opportunity to prove that it was not using the '184 process.

**ANSWER TO COMPLAINT NO. 23:**

Defendants deny the allegations of Paragraph 23.

**COMPLAINT NO. 24:**

On information and belief, one or more Defendants continue to make, use, sell and/or offer for sale within the United States and this District, and import into the United States the Accused Products using the '184 patent process, without authority to do so, in violation of 35 U.S.C. § 271, knowing such to be an infringement of the '184 patent, and in wanton and willful disregard of Plaintiff's '184 patent rights.

**ANSWER TO COMPLAINT NO. 24:**

Defendants deny the allegations of Paragraph 24.

**COMPLAINT NO. 25:**

On information and belief, one or more Defendants continue to contribute to infringement of the '184 patent and actively induce others to infringe the '184 patent by virtue of making, importing, selling, using and/or offering for sale within the United States and this District, in violation of 35 U.S.C. § 271, Accused Products manufactured using the '184 patent process in wanton and willful disregard of Plaintiff's '184 patent rights.

**ANSWER TO COMPLAINT NO. 25:**

Defendants deny the allegations of Paragraph 25.

**COMPLAINT NO. 26:**

On information and belief, the conduct of OXO and one or more other Defendants in willfully continuing to infringe the '184 patent, and to contribute to

1 infringement and induce others to infringe the '184 patent, by the acts alleged  
2 hereinabove despite being on both constructive notice and actual notice, is  
3 deliberate, thus making this an exceptional case within the meaning of 35 U.S.C. §  
4 285.

5 **ANSWER TO COMPLAINT NO. 26:**

6 Defendants deny the allegations of Paragraph 26.

7 **COMPLAINT NO. 27:**

8 On information and belief, Plaintiff has suffered and is continuing to suffer  
9 damages by reason of Defendants' infringing conduct alleged hereinabove. The  
10 damages for Defendants' conduct are in an amount that constitutes at least a  
11 reasonable royalty for all of Defendants' sales of the Accused Products during the  
12 last six years.

13 **ANSWER TO COMPLAINT NO. 27:**

14 Defendants deny the allegations of Paragraph 27.

15 **COMPLAINT NO. 28:**

16 On information and belief, the reasonable royalty owed to Plaintiff from  
17 Defendants is at least eight percent (8%) of gross revenues from sales of the  
18 Accused Products, and according to proof at trial.

19 **ANSWER TO COMPLAINT NO. 28:**

20 Defendants deny the allegations of Paragraph 28.

21 **COMPLAINT NO. 29:**

22 On information and belief, the reasonable royalty owed to SRDT from  
23 Defendants should be trebled on account of willful infringement by Defendants,  
24 and according to proof at trial.

25 **ANSWER TO COMPLAINT NO. 29:**

26 Defendants deny the allegations of Paragraph 29.  
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**ANSWER TO PRAYER FOR RELIEF**

Defendants deny that Plaintiff is entitled to any of the relief requested in its prayer for relief.

**AFFIRMATIVE DEFENSES**

For their Affirmative Defenses, Defendants allege as follow:

**FIRST DEFENSE:** The Complaint fails to state a claim upon which relief can be granted.

**SECOND DEFENSE:** The '184 patent, and each claim thereof, is invalid because it does not comply with the statutory requirements of patentability enumerated in, *inter alia*, 35 U.S.C. §§ 101, 102, 103, 112, 116 and/or 132.

**THIRD DEFENSE:** Defendants have not infringed, either literally or under the doctrine of equivalents, nor contributed to the infringement by others, nor induced others to infringe, any claim of the '184 Patent.

**FOURTH DEFENSE:** HOT has not infringed, either literally or under the doctrine of equivalents, nor contributed to the infringement by others, nor induced others to infringe, any claim of the '184 Patent, as it does not make, sell, offer for sale, or import into the United States any products, let alone products that are covered by any claims of the '184 Patent.

**FIFTH DEFENSE:** Plaintiff's attempted enforcement of the '184 Patent against Defendants is barred by the doctrine of prosecution laches.

**SIXTH DEFENSE:** Plaintiff is barred, in whole or in part, from seeking any relief because of the equitable doctrine of unclean hands.

**SEVENTH DEFENSE:** Plaintiff is barred, in whole or in part, from seeking any relief because of laches, waiver, acquiescence, and/or estoppel.

**EIGHTH DEFENSE:** Plaintiff is barred, in whole or in part, from seeking the relief sought in Plaintiff's Complaint to the extent that it is barred pursuant to 35 U.S.C. § 286.



1           5. Through his Complaint, Sorensen charges Counter-Plaintiffs with  
2 infringement of the '184 Patent, and thus has submitted itself to the jurisdiction of  
3 this Court and has created an actual controversy between the parties.

4                                   **COUNT I**

5                   **DECLARATION OF NONINFRINGEMENT OF THE '184 PATENT**

6           6. Counter-Plaintiffs have not infringed, either literally or under the  
7 doctrine of equivalents, nor contributed to the infringement by others, nor induced  
8 others to infringe, any claim of the '184 patent.

9           7. Sorensen's actions have caused, and continue to cause, damages to  
10 Counter-Plaintiffs, in an amount to be determined at trial. Sorensen's allegations  
11 of infringement of the '184 patent have caused, and continue to cause, irreparable  
12 injury to Counter-Plaintiffs, and unless and until Sorensen's actions are enjoined  
13 by this Court, Counter-Plaintiffs will continue to suffer irreparable injury because  
14 of Sorensen's meritless allegations. Counter-Plaintiffs have no adequate remedy at  
15 law.

16                                   **COUNT II**

17                   **DECLARATION OF INVALIDITY OF THE '184 PATENT**

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19           12. The '184 patent, and each claim thereof, is invalid for failure to satisfy  
20 one or more of the conditions of patentability set forth in Title 35, including, *inter*  
21 *alia*, 35 U.S.C. §§ 101, 102, 103, 112, 116 and/or 132.

22           13. Sorensen's actions have caused, and continue to cause, damages to  
23 Counter-Plaintiffs, in an amount to be determined at trial. Sorensen's allegations  
24 of infringement of the '184 patent have caused, and continue to cause, irreparable  
25 injury to Counter-Plaintiffs, and unless and until Sorensen's actions are enjoined  
26 by this Court, Counter-Plaintiffs will continue to suffer irreparable injury because  
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1 of Sorensen's meritless allegations. Counter-Plaintiffs have no adequate remedy at  
2 law.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Counter-Plaintiffs respectfully request that the Court enter  
5 judgment against Counter-Defendant and grant the following relief:

- 6 a. dismissal of Sorensen's Complaint against Counter-Plaintiffs in its  
7 entirety, with prejudice, and a denial of the relief sought in its claims;  
8 b. a declaration that Counter-Plaintiffs have not infringed, contributorily  
9 infringed, or induced the infringement of any claim of the '184 patent;  
10 c. a declaration that the '184 patent, and each claim thereof, is invalid;  
11 d. an award to Counter-Plaintiffs for their reasonable attorney's fees and  
12 costs, pursuant to 35 U.S.C. § 285; and  
13 f. such other and further relief as the Court deems just and proper.

14 DATED: April 25, 2008

SEYFARTH SHAW LLP  
CHRISTOPHER C. LARKIN  
ERIK B. VON ZEIPEL

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16  
17 By /s/ Erik B. von Zeipel  
Attorneys for Defendants  
18 HELEN OF TROY TEXAS  
CORPORATION AND  
19 OXO INTERNATIONAL LTD.  
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